

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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FOREST LABORATORIES, INC., :
FOREST LABORATORIES HOLDINGS, LTD., :
MERZ PHARMA GMBH & CO. KGAA, and :
MERZ PHARMACEUTICALS GMBH, :
Plaintiffs, : Civ. Action No. 08 CV 021 (GMS-LPS)
v. :
COBALT LABORATORIES, INC., LUPIN :
PHARMACEUTICALS, INC., LUPIN LTD., :
ORCHID PHARMACEUTICALS, INC., ORCHID :
CHEMICALS AND PHARMACEUTICALS LTD. :
(D/B/A ORCHID HEALTHCARE), TEVA :
PHARMACEUTICALS USA, INC., :
UPSHER-SMITH LABORATORIES, INC., :
WOCKHARDT USA, INC. AND WOCKHARDT :
LIMITED, :
Defendants. :
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ANSWER OF DEFENDANT TEVA PHARMACEUTICALS USA, INC.

Teva Pharmaceuticals USA, Inc. ("Teva USA"), through its undersigned counsel, hereby answers the Complaint of plaintiffs Forest Laboratories, Inc., Forest Laboratories Holdings, Ltd., Merz Pharma GmbH & Co, KGaA, and Merz Pharmaceuticals GmbH (collectively "Plaintiffs") as follows. This Answer is based on Teva USA's knowledge as to its own activities, and upon information and belief as to the activities of others. The numbered paragraphs below correspond to the numbered paragraphs in Plaintiffs' Complaint. To the extent not specifically admitted herein, the allegations of the Complaint are denied.

PARTIES

1. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.
2. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.
3. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.
4. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.
5. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.
6. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.
7. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.
8. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.
9. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.
10. Teva USA admits that it is Delaware corporation with a principle place of business at 1090 Horsham Road, North Wales, Pennsylvania 19454.
11. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

12. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

13. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

NATURE OF THE ACTION

14. Upon information and belief, Teva USA admits that Plaintiffs purport to state claims that arise under the patent laws of the United States.

JURISDICTION AND VENUE

15. Upon information and belief, Teva USA admits that Plaintiffs purport to state claims that arise under the patent laws of the United States, and that this Court has subject matter jurisdiction over patent infringement actions pursuant to 28 U.S.C. §§ 1331 and 1338(a).

16. Teva USA denies the allegations of this paragraph as they pertain to Teva USA. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations against other parties contained in this paragraph and therefore denies them.

17. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

18. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

19. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

20. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

21. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

22. Teva USA admits that it is a Delaware corporation, and that it does not contest personal jurisdiction in this District. The allegations of this paragraph are otherwise denied.

23. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

24. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

25. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

26. Teva USA does not contest venue in this judicial district under 28 U.S.C. §§ 1391 and 1400(b). The allegations of this paragraph are otherwise denied.

THE PATENT IN SUIT

27. Upon information and belief, Teva USA admits that the United States Patent and Trademark Office issued U.S. Patent No. 5,061,703 (“the ’703 patent”), titled “Adamantane Derivatives in the Prevention and Treatment of Cerebral Ischemia” on October 29, 1991, and that the patent on its face states that it was assigned to “Merz + Co. GmbH & Co.” Teva USA denies that the ’703 patent was “duly and legally” issued, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies them.

28. Upon information and belief, Teva USA admits that the Orange Book lists “Forest Labs” as the “Applicant” for New Drug Application (“NDA”) No. 21-487. Upon information and belief, Teva USA admits that the ’703 patent is listed in the Orange Book for memantine

hydrochloride tablets. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies them.

29. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

30. Upon information and belief, Teva USA admits that a reexamination certificate to the '703 patent issued on November 7, 2006, and is attached to the Complaint as Exhibit B. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph and therefore denies them

Count I

31. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

32. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

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36. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

Count II

37. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

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44. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

Count III

45. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

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50. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

51. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

52. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

Count IV

53. Teva USA admits that it submitted Abbreviated New Drug Application (“ANDA”) No. 90-052 to the United States Food and Drug Administration (“FDA”) to obtain approval to market 5 milligram and 10 milligram memantine hydrochloride tablet products. Teva USA further admits that ANDA No. 90-052 contains a certification, pursuant to 21 U.S.C. § 355 (j)(2)(A)(vii)(IV) (“Paragraph IV Certification”). The allegations of this paragraph are otherwise denied.

54. Teva USA admits that along with ANDA No. 90-052 it filed a Paragraph IV Certification that the claims of the '703 patent are invalid, unenforceable, and/or will not be infringed by the manufacture, use or sale of the drug products for which the ANDA was submitted. Upon information and belief, Teva USA further admits that Plaintiffs received

written notification of ANDA No. 90-052 and its Paragraph IV Certification on November 30, 2007. The allegations of this paragraph are otherwise denied.

55. Teva USA admits that under 35 U.S.C. § 271(e)(2) it is a technical act of infringement to submit an ANDA for a drug claimed in a patent or the use of which is claimed in a patent. The allegations of this paragraph are otherwise denied.

56. Admitted.

57. Denied.

58. Denied.

Count V

59. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

60. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

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Count VI

65. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

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69. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

71. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

72. Teva USA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies them.

RESPONSE TO PRAYER FOR RELIEF

Teva USA denies that Plaintiffs are entitled to any of the relief sought in the "Prayer for Relief" of the Complaint.

AFFIRMATIVE DEFENSES

Teva USA, without prejudice to the denials set forth in its Answer, alleges the following defenses to Plaintiffs' Complaint. Teva USA reserves its right to assert additional defenses as it learns more information through discovery.

FIRST DEFENSE

1. Teva USA's manufacture, sale, use, offer for sale or sale and/or importation of drug product pursuant to ANDA No. 90-052 has not infringed, does not infringe and will not infringe one or more of the claims of the '703 patent.

SECOND DEFENSE

2. The claims of the '703 patent are invalid for failure to comply with one or more requirements of 35 U.S.C. § 100 *et. seq.*, including, but not limited to, §§ 101, 102, 103, and/or 112.

THIRD DEFENSE

3. The Complaint fails to state a claim against Teva USA upon which relief may be granted.

PRAYER FOR RELIEF

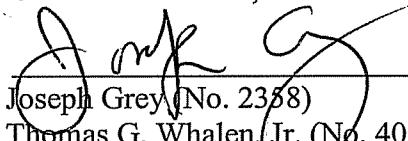
WHEREFORE, Teva USA respectfully requests that the Court enter judgment against Plaintiffs to include:

- A. dismissal of Plaintiffs' Complaint with prejudice;
- B. denial of each of Plaintiffs' requested forms of relief against Teva USA;
- C. an award to Teva USA of its reasonable costs and attorney's fees and expenses in connection with this action; and
- D. such other and further relief as the Court may deem just and proper.

Respectfully submitted,

STEVENS & LEE, P.C.

Dated: January 31, 2008


Joseph Grey (No. 2388)
Thomas G. Whalen, Jr. (No. 4034)
1105 North Market Street, 7th Floor
Wilmington, DE 19801
Tel: (302) 654-5180
 (302) 425-3307
Fax: (302) 654-5181
 (610) 371-8512
E-mail: jg@stevenslee.com
tgw@stevenslee.com

*Attorneys for Defendant
Teva Pharmaceuticals USA, Inc.*

Of Counsel

KENYON & KENYON LLP
Steven J. Lee
Sheila Mortazavi
One Broadway
New York, NY 10004
Telephone: 212-425-7200
Facsimile: 212-425-5288

CERTIFICATE OF SERVICE

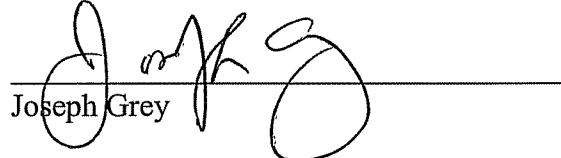
I, Joseph Grey, hereby certify that, on this 31st day of January, 2008, and in addition to the service provided by the Court's CM/ECF system, true and correct copies of the following Answer were served by first class United States mail, postage prepaid, upon counsel at the following addresses:

Jack B. Blumenfeld, Esquire
Maryellen Noreika, Esquire
Morris, Nichols, Arsh & Tunnell, LLP
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899-1347

F. Dominic Cerrito, Esquire
Daniel C. Malone, Esquire
Eric C. Stops, Esquire
Jones Day
222 East 41st Street
New York, NY 10017

John Desmarais, Esquire
Gerald J. Flattman, Jr., Esquire
Melanie R. Rupert, Esquire
Kirkland & Ellis LLP
Citigroup Center
153 East 53rd Street
New York, NY 10021

Richard K. Herrmann, Esquire
Mary B. Matterer, Esquire
Amy Arnott Quinlan, Esquire
Morris James LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801-1494



Joseph Grey